

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
MIDDLE DIVISION**

ROBERT H. KING, JR.,

Plaintiff,

v.

ALLSTATE INSURANCE COMPANY,

Defendant.

CV-09-BE-0322-M

MEMORANDUM OPINION AND FINAL ORDER

The case comes before the court on Defendant's Motion to Dismiss the Amended Complaint (doc. 18). After briefing by the parties, the court held a hearing on the motion. For the reasons stated on the Record and summarized below, the motion is GRANTED.

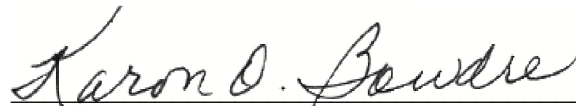
In the Amended Complaint, Plaintiff seeks to assert a direct action against Allstate Insurance Company. However, the Amended Complaint fails to plead a final judgment in favor of the Plaintiff and against the Allstate Insured, as required by Alabama Code § 27-23-2. Although Plaintiff requested leave to amend again, such amendment would be futile because of the final order entered on June 14, 2006 in *King v. King*, CV-02-916 in Etowah County, Alabama in favor of the Allstate individual and against Plaintiff, and affirmed on February 2, 2007 by the Alabama Court of Civil Appeals.

Further, Plaintiff's initial effort to plead third party beneficiary status also fails. At the hearing, Plaintiff's counsel acknowledged that a suit under a third party beneficiary theory was not appropriate, and the court agrees; Plaintiff failed to plead any facts that invoke that status or

that otherwise plausibly give rise to an entitlement to relief under that theory.

Therefore, the Amended Complaint is DISMISSED with prejudice. Costs taxed as paid.

DONE and ORDERED this 23rd day of November, 2009.


KARON OWEN BOWDRE
UNITED STATES DISTRICT JUDGE